

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5692

Chapter 471, Laws of 2005

59th Legislature
2005 Regular Session

TAX REFUND ANTICIPATION LOANS

EFFECTIVE DATE: 7/24/05

Passed by the Senate April 18, 2005
YEAS 43 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 15, 2005
YEAS 94 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 13, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5692** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 13, 2005 - 3:55 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5692

AS AMENDED BY THE HOUSE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senate Committee on Financial Institutions, Housing & Consumer Protection (originally sponsored by Senators Berkey, Benton, Prentice and Keiser)

READ FIRST TIME 02/25/05.

1 AN ACT Relating to tax refund anticipation loans; adding a new
2 chapter to Title 19 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the
5 tax refund anticipation loan act.

6 NEW SECTION. **Sec. 2.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise.

8 (1) "Borrower" means a taxpayer who receives the proceeds of a
9 refund anticipation loan.

10 (2) "Department" means the department of financial institutions.

11 (3) "Director" means the director of the department of financial
12 institutions.

13 (4) "Facilitator" means a person who receives or accepts for
14 delivery an application for a refund anticipation loan, delivers a
15 check in payment of refund anticipation loan proceeds, or in any other
16 manner acts to allow the making of a refund anticipation loan.

17 "Facilitator" does not include a bank, thrift, savings association,
18 industrial bank, or credit union, operating under the laws of the

1 United States or this state, an affiliate that is a servicer for such
2 an entity, or any person who acts solely as an intermediary and does
3 not deal with a taxpayer in the making of the refund anticipation loan.

4 (5) "Lender" means a person who extends credit to a borrower in the
5 form of a refund anticipation loan.

6 (6) "Person" means an individual, a firm, a partnership, an
7 association, a corporation, or other entity.

8 (7) "Refund anticipation loan" means a loan borrowed by a taxpayer
9 from a lender based on the taxpayer's anticipated federal income tax
10 refund.

11 (8) "Refund anticipation loan fee" means the charges, fees, or
12 other consideration imposed by the lender for a refund anticipation
13 loan. This term does not include any charge, fee, or other
14 consideration usually imposed by the facilitator in the ordinary course
15 of business for nonloan services, such as fees for tax return
16 preparation and fees for electronic filing of tax returns.

17 (9) "Refund anticipation loan fee schedule" means a listing or
18 table of refund anticipation loan fees charged by the facilitator or
19 the lender for three or more representative refund anticipation loan
20 amounts. The schedule shall list separately each fee or charge
21 imposed, as well as a total of all fees imposed, related to the making
22 of refund anticipation loans. The schedule shall also include, for
23 each representative loan amount, the estimated annual percentage rate
24 calculated under the guidelines established by the federal truth in
25 lending act, 15 U.S.C. Sec. 1601 et seq.

26 (10) "Taxpayer" means an individual who files a federal income tax
27 return.

28 NEW SECTION. **Sec. 3.** (1) No person may individually, or in
29 conjunction or cooperation with another person act as a facilitator
30 unless that person is:

31 (a) A tax preparer or works for a person that engages in the
32 business of tax preparation;

33 (b) Accepted by the internal revenue service as an authorized IRS
34 e-file provider; and

35 (c) Registered with the department as a facilitator. The director
36 may prescribe the registration form.

1 (2) A person is registered as a facilitator by providing the
2 department, on or before December 31st of each year with:

3 (a) A list of authorized IRS e-file providers in the state of
4 Washington for the current tax filing year; and

5 (b) A thirty-five dollar processing fee for each authorized e-file
6 provider on the list.

7 (3) After the December 31st deadline, a facilitator may amend the
8 registration required in subsection (2) of this section to reflect
9 additions or deletions of office locations or e-file providers
10 authorized by the internal revenue service.

11 (4) The department shall make available to the public a list of all
12 facilitators registered under this section.

13 (5) This section does not apply to a person doing business as a
14 bank, thrift, savings association, industrial bank, or credit union,
15 operating under the laws of the United States or this state, an
16 affiliate that is a servicer for such an entity, or any person who acts
17 solely as an intermediary and does not deal with a taxpayer in the
18 making of the refund anticipation loan.

19 (6) This chapter shall preempt and be exclusive of all local acts,
20 statutes, ordinances, and regulations relating to refund anticipation
21 loans. This subsection shall be given retroactive and prospective
22 effect.

23 NEW SECTION. **Sec. 4.** (1) For all refund anticipation loans, a
24 facilitator must provide clear disclosure to the borrower prior to the
25 borrower's completion of the application. The disclosure must contain
26 the following:

27 (a) The refund anticipation loan fee schedule; and

28 (b) A written statement, in a minimum of ten-point type, containing
29 the following elements:

30 (i) That a refund anticipation loan is a loan, and is not the
31 borrower's actual income tax refund;

32 (ii) That the taxpayer can file an income tax return electronically
33 without applying for a refund anticipation loan;

34 (iii) The average times according to the internal revenue service
35 within which a taxpayer who does not obtain a refund anticipation loan
36 can expect to receive a refund if the taxpayer's return is (A) filed
37 electronically and the refund is directly deposited to the taxpayer's

1 bank account or mailed to the taxpayer, and (B) mailed to the internal
2 revenue service and the refund is directly deposited to the taxpayer's
3 bank account or mailed to the taxpayer;

4 (iv) That the internal revenue service does not guarantee that it
5 will pay the full amount of the anticipated refund and it does not
6 guarantee a specific date that a refund will be deposited into a
7 taxpayer's financial institution account or mailed to a taxpayer;

8 (v) That the borrower is responsible for repayment of the loan and
9 related fees in the event that the tax refund is not paid or paid in
10 full;

11 (vi) The estimated time within which the loan proceeds will be paid
12 to the borrower if the loan is approved;

13 (vii) The fee that will be charged, if any, if the borrower's loan
14 is not approved; and

15 (viii) The borrower's right to rescind the refund anticipation loan
16 transaction as provided in section 5 of this act.

17 (2) The following additional information must be provided to the
18 borrower of a refund anticipation loan before consummation of the loan
19 transaction:

20 (a) The estimated total fees for obtaining the refund anticipation
21 loan; and

22 (b) The estimated annual percentage rate for the borrower's refund
23 anticipation loan, using the guidelines established under the federal
24 truth in lending act (15 U.S.C. Sec. 1601 et seq.).

25 NEW SECTION. **Sec. 5.** A borrower may rescind a loan, on or before
26 the close of business on the next day of business, by either returning
27 the original check issued for the loan or providing the amount of the
28 loan in cash to the lender or the facilitator. The facilitator may not
29 charge the borrower a fee for rescinding the loan or a refund
30 anticipation loan fee if the loan is rescinded but may charge the
31 borrower the administrative cost of establishing a bank account to
32 electronically receive the refund.

33 NEW SECTION. **Sec. 6.** It is unlawful for a facilitator of a refund
34 anticipation loan to engage in any of the following activities:

35 (1) Misrepresent a material factor or condition of a refund
36 anticipation loan;

1 (2) Fail to process the application for a refund anticipation loan
2 promptly after the consumer applies for the loan;

3 (3) Engage in any dishonest, fraudulent, unfair, unconscionable, or
4 unethical practice or conduct in connection with a refund anticipation
5 loan;

6 (4) Arrange for a creditor to take a security interest in any
7 property of the consumer other than the proceeds of the consumer's tax
8 refund and the account into which that tax refund is deposited to
9 secure payment of the loan; and

10 (5) Offer a refund anticipation loan that, including any refund
11 anticipation loan fee or any other fee related to the loan or tax
12 preparation, exceeds the amount of the anticipated tax refund.

13 NEW SECTION. **Sec. 7.** Any person who knowingly and willfully
14 violates this chapter is guilty of a misdemeanor and shall be fined up
15 to five hundred dollars for each offense.

16 NEW SECTION. **Sec. 8.** The legislature finds that the practices
17 covered by this chapter are matters vitally affecting the public
18 interest for the purpose of applying the consumer protection act,
19 chapter 19.86 RCW. A violation of this chapter is not reasonable in
20 relation to the development and preservation of business and is an
21 unfair or deceptive act in trade or commerce and an unfair method of
22 competition for the purpose of applying the consumer protection act,
23 chapter 19.86 RCW.

24 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
25 a new chapter in Title 19 RCW.

Passed by the Senate April 18, 2005.

Passed by the House April 15, 2005.

Approved by the Governor May 13, 2005.

Filed in Office of Secretary of State May 13, 2005.